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Sixth Committee

“Responsibility of States for internationally wrongful acts”

**Statement by Jem Dogan
Permanent Mission of the Kingdom of the Netherlands to the
United Nations**

NEW YORK, 13 October 2022

Madam/Mr. Chair,

The Kingdom of the Netherlands continues to support the Articles on the Responsibility of States for Internationally Wrongful Acts. This without any reservation. My Government attaches great importance to the Articles as a whole. This includes the very fabric of the Articles, its system and its coherence. The Netherlands would at this stage also like to commemorate the late Judge James Crawford, whose passing away caused a great loss for the community of international law. His influence on the development of the law on State Responsibility had been immeasurable.

We are therefore pleased to note that the Articles are being relied on by national and international courts and tribunals as reflective of the law on State responsibility. It may be acknowledged that differences exist between the various jurisdictions as to the interpretation of particular provisions in a particular context. That, however, applies to all rules of international law. This phenomenon will also not disappear if and when the Articles would be codified in a treaty.

Therefore, my Government continues to be cautious with respect to the initiation of negotiations on a treaty. This is to preserve the integrity of the Articles as designed by the ILC and adopted by the General Assembly. State practice is still developing.

For instance, recent developments have caused us all to recognize the importance of the provisions on non-recognition, the obligation to cooperate and bring to an end, and not to render aid or assistance to serious breaches of peremptory norms. The relevance of this provision, as well as its implementation and application in the practice of States, has been clarified.

In addition, the continuing development of relevant State practice is also required to sharpen the extent of certain

notions. For instance, the interplay between State organs under Article 4, entities exercising governmental authority under Article 5, and private persons under instruction, direction or control under Article 8, is becoming increasingly clear.

The continuing development of State practice will thus fortify the whole of the Articles, and reduce the risk of cherry-picking by States of their preferred provision, to the detriment of other provisions.

As the ILC took over 50 years to develop the draft Articles on State Responsibility, the Kingdom of the Netherlands would support a very cautious approach, as also referred to in the statement made by Canada, made on behalf of Canada, New Zealand and Australia.

We are not yet in a position to support incremental steps, either on procedure or on substance, which takes us to a negotiating stage, or that inevitably lead to starting negotiations on a treaty.

As my Government has stated before, there is also no need at present for such a treaty. To the extent that the Articles on State Responsibility are applied in practice, the fact that they are not included in a treaty has not appeared as an obstacle for reference to their contents, both before national and international courts and tribunals, and between States. Thus, the development of international law is organically achieved.

Finally, the Kingdom of the Netherlands would emphasise that the Articles have served us well since their adoption in 2001. Let me also take this opportunity to assure delegations that we support the work of the ILC, including the progressive development of international law. Caution is required, therefore, to prevent the unravelling of the Articles that are so well designed.

Thank you, Madam/Mr. Chair